

DATE: April 19, 2004

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-17408

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina T. Mills, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has been arrested seven times for alcohol-related offenses since 1973. His last offense, an arrest and conviction for driving while intoxicated, took place in 1994; however, Applicant still drinks to excess at least monthly and has offered no information to mitigate or extenuate the security concerns raised under Guideline G (alcohol consumption). Clearance is denied.

**STATEMENT OF THE CASE**

On August 11, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline G (alcohol consumption). The SOR further informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. (1)

On October 1, 2003, Applicant answered the SOR (Answer) and requested a determination without a hearing. On November 7, 2003, DOHA Department Counsel submitted a file of relevant materials (FORM) in support of the government's preliminary decision, a copy of which was sent to Applicant on January 16, 2004. Applicant was informed he had until February 28, 2004, to submit any response, rebuttal, or objection to the FORM; however, Applicant did not submit anything further in his own behalf. The case was assigned to me on March 22, 2004.

**FINDINGS OF FACT**

Applicant has admitted all of the allegations in the SOR. His admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is 50 years old. Since 1995, he has worked on and off as a services technician for defense contractors providing services to military facilities in Alaska. He submitted a Security Clearance Application (SF-86) in January

2001, wherein he disclosed that he had been arrested for various criminal offenses, including drug possession, weapons charges, burglary, and alcohol-related offenses.<sup>(2)</sup>

Applicant has never been married; nor has he ever served in the military. His most recent education was a course in weather observation for which he received a certificate from the U.S. Air Force in 1986.<sup>(3)</sup>

Since May 1973, when he was 19 years old, Applicant has been arrested for alcohol-related violations of the law seven times.<sup>(4)</sup> Most recently, he was arrested for driving while intoxicated (DWI) in October 1994. While driving home from a bar where he had been drinking, he was involved in a minor car accident that was not his fault. When police arrived to investigate, they could tell Applicant had been drinking. He was found to have a blood alcohol content (BAC) over .21%. He eventually pled no contest to a charge of DWI and was sentenced to three days in jail and fined \$250. His drivers license was also suspended, he was ordered to complete an alcohol safety and awareness program, receive individual alcohol counseling, and attend Alcoholics Anonymous meetings. Applicant completed his sentence requirements in April 1995 and was given back his license.<sup>(5)</sup>

Applicant was also arrested for public intoxication after a bar fight in November 1973. He was injured during the fight but refused medical attention. The police report noted that he was "under (the) influence (of alcohol) to a degree as to be unable to care for (him)self or (for the) safety of others."<sup>(6)</sup> When he was arrested for DWI in August 1980 and June 1982, the arresting officers each noted in their reports that Applicant was unable to stand when he stepped out of the car he was driving when pulled over. Applicant also became belligerent toward the police during each of these arrests.<sup>(7)</sup>

In 1984, Applicant checked himself into a 28-day inpatient alcohol rehabilitation program; however, there is no information in the record about a diagnosis or other assessment of Applicant's alcohol usage. He currently drinks to intoxication at least monthly and estimates it takes him between eight and twelve beers to become intoxicated. Applicant regularly drinks lesser amounts (between three and five beers) each week, usually on a Friday and/or Saturday night, but asserts he does so only at home as he does not want to risk another DWI arrest.

### **POLICIES**

The Directive sets forth adjudicative guidelines<sup>(8)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline G (alcohol consumption).

### **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(9)</sup> for an Applicant to either receive or continue to have access to classified information. The government bears an initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.<sup>(10)</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's

suitability for access in favor of the Government. [\(11\)](#)

## CONCLUSIONS

Under Guideline G (alcohol consumption), excessive alcohol consumption is a security concern because it often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. [\(12\)](#) One who shows he cannot manage the intoxicating effects of alcohol in a responsible manner may be prone to inadvertent disclosures of sensitive or classified information. Such conduct may also indicate a more general lack of trustworthiness or good judgment.

Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under Guideline G. The Applicant has a 30-year history of alcohol-related incidents and arrests. The arrest records included in the FORM, as well as Applicant's own admissions in the SF-86, his sworn statement to the Defense Security Service and his Answer, fully support the SOR allegations. Guideline G disqualifying condition (DC) 1 [\(13\)](#) and DC 5 [\(14\)](#) apply here.

Applicant's position in response to the SOR is that "most of these occurrences (sic) happened over 20-30 years ago." [\(15\)](#) This is simply not true. The events listed in the SOR *began* 30 years ago. Because the last known offense occurred in 1994, the only possible mitigating condition (MC) applicable here would be MC 2. [\(16\)](#) However, in light of the fact Applicant still drinks to excess and intoxication on a regular basis, I cannot conclude there is no indication of a recent problem. At best, by Applicant's own admission, he only drinks at home so he will not be arrested for DWI. Likewise, the fact that Applicant has continued to have alcohol-related problems and drink to excess after having been in a 28-day alcohol rehabilitation program further undermines my confidence Applicant's drinking will not be a problem in the future. I conclude Guideline G against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. These facts raise reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to resolve those doubts, which Applicant failed to provide, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

## FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Alcohol Consumption (Guideline G): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. FORM Item 4.
3. Id.
4. Answer; FORM, Items 4 - 7, 9 - 14.
5. FORM, Item 5.
6. FORM, Item 9.
7. FORM, Items 11 and 12.
8. Directive, Enclosure 2.
9. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
10. *See Egan*, 484 U.S. at 528, 531.
11. *See Egan*; Directive E2.2.2.
12. Directive, E2.A7.1.1.
13. Directive, E2.A7.1.2.1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;
14. Directive, E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;
15. Answer.
16. Directive, E2.A7.3.1.2.2. The problem occurred a number of years ago *and* there is no indication of a recent problem; (emphasis added)